

1 **UNITED STATES DISTRICT COURT**

2 **DISTRICT OF NEVADA**

3 THOMAS THATCHER SCHEMKES, )  
 4 JAMES HAMMOND individually and on )  
 5 behalf of others similarly situated, )

Case No.: 2:09-cv-01100-GMN-PAL

6 Plaintiffs, )

**ORDER**

7 vs. )

8 CLS NEVADA, LLC; a Delaware )  
 9 Corporation, d/b/a CLS TRANSPORTATION, )  
 10 LAS VEGAS, )

11 Defendants. )

12 Pending before the Court is Motion for Judgment (ECF No. 222) filed by Plaintiff  
 13 Thomas Thatcher Schemkes (“Plaintiff”). The deadline for Defendant CLS Nevada, LLC d/b/a  
 14 CLS Transportation, Las Vegas (“Defendant”) to file a Response in opposition was August 9,  
 15 2013. However, Defendant has failed to file any opposition.

16 **I. BACKGROUND**

17 This action originated in 2009 as an action “seeking unpaid minimum wage and interest  
 18 thereon . . . under the Fair Labor Standards Act . . . .” (Compl. ¶ 1, ECF No. 1.) Eventually, the  
 19 parties filed a Joint Motion for Approval of Settlement in May 2012, (ECF No. 218), which the  
 20 Court approved (ECF No. 221). Thereafter, Defendant apparently ceased complying with the  
 21 terms of the settlement agreement and, in July 2013, Plaintiff filed the instant Motion for  
 22 Judgment, as authorized by the settlement agreement. (ECF No. 222; *see also* Joint Mot. Ex. A,  
 23 at 4:1–8 , ECF No. 218-1.) Despite the passage of more than six months since Plaintiff filed  
 24 this Motion, Defendant has failed to file a Response in opposition to Plaintiff’s Motion.

25 **II. DISCUSSION**

Local Rule 7-2(d) provides that “[t]he failure of an opposing party to file points and

1 authorities in response to any motion shall constitute a consent to the granting of the motion.”  
2 D. Nev. R. 7-2(d). Thus, Defendant’s failure to file an opposition to the instant motion  
3 constitutes a consent to the granting of the motion.

4 Furthermore, Plaintiff’s Motion adequately states its basis for the requested relief.  
5 Specifically, Plaintiff states that:


- 6 1. Defendant has failed to comply with the Court’s Settlement Order dated June 18,  
7 2012;
- 8 2. Defendant has failed to make the required deposits into the Qualified Settlement  
9 Fund;
- 10 3. Defendant has failed to provide Plaintiffs’ Counsel with proof of deposits as  
11 required by the Settlement Agreement; and
- 12 4. Despite many attempts by the Plaintiffs’ counsel to contact the Defendant, the  
13 Defendant has failed to respond or attempt to comply with the Settlement Order.

14 **III. CONCLUSION**

15 **IT IS HEREBY ORDERED** that the Stipulated Judgment (“Judgment”), a copy of  
16 which is attached hereto as Exhibit 1, is hereby entered in this matter. It is further ordered, that  
17 the unpaid portion of the agreed upon settlement amount (as set forth in the Settlement  
18 Agreement), in the amount of \$290,000, plus 10% per month interest for the period of non-  
19 compliance from August of 2012 until the date of full payment, shall be due immediately.

20 The clerk shall enter judgment accordingly.

21 **DATED** this 26 day of February, 2014.

22  
23  
24  
25  
  
\_\_\_\_\_  
Gloria M. Navarro, Chief Judge  
United States District Judge

# Exhibit 1: Stipulated Judgment

**STIP**

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*Attorney for Plaintiffs*

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

Thomas Thatcher Schemkes, James Hammond )	Case No.: <u>2:09-CV-1100-GMN-PAL</u>
Individually And On Behalf Of Others )	
Similarly Situated, )	
Plaintiffs, )	<b>STIPULATED JUDGMENT</b>
vs. )	
CLS Nevada, LLC; a Delaware Corporation, )	
doing business as CLS Transportation, Las )	
Vegas, )	Judge: <u>Hon. Gloria M. Navarro</u>
Defendant. )	Magistrate Judge: <u>Hon. Peggy A. Leen</u>

**STIPULATED JUDGMENT**

1 A. STATEMENT OF JUDGMENT

2 CLS NEVADA, LLC d/b/a CLS TRANSPORTATION LAS VEGAS, a Delaware  
3 limited liability company (hereinafter, "Defendant") hereby allow judgment in favor of Plaintiffs  
4 Thomas Thatcher Schemkes, James Hammond, individually and on behalf of others similarly  
5 situated (hereinafter "Plaintiffs") in the principal sum of Three Hundred Thousand Dollars  
6 (\$300,000.00), and authorizes the entry of judgment against the Defendant in said sum.

7 This Stipulated Judgment is for alleged unpaid minimum wage and overtime payments  
8 under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 *et seq.*, to Plaintiffs, and arises  
9 upon the following facts, to wit:

10 Defendant paid its Plaintiffs and other similarly situated limousine drivers on a  
11 commission basis. Defendant hereby agrees to settle this case for a sum of Three Hundred  
12 Thousand Dollars (\$300,000.00). Defendant does not admit the violation of any laws.

13  
14 B. AGREEMENT BETWEEN PARTIES TO PAYMENT OF THE JUDGMENT  
15 AMOUNT.

16 Notwithstanding anything contained in subsection A to the contrary, the parties hereto  
17 have agreed to fully compromise and settle this matter for the total payment of Three Hundred  
18 Thousand Dollars (\$300,000.00), in monthly installments in the amount of Five Thousand  
19 Dollars (\$5,000.00), commencing on June 1, 2012 and continuing on the first (1<sup>st</sup>) day of each  
20 month thereafter until the judgment balance is satisfied.

21 Within 30 days after Approval of the Settlement by the Court, the Defendant shall  
22 establish a Qualified Settlement Fund Account in a financial institution, agreed on by the  
23 Plaintiffs' and Defendant's Counsel, and thereafter perform all Trustee duties required for the  
24 operation of the Qualified Settlement Fund Account. Within 30 days of the Approval of the  
25 Settlement, CLS shall deposit the first installment of \$5000.00 in that account, and shall

1 subsequently deposit \$5000.00 each month until the total Settlement Amount of \$300,000.00 is  
2 deposited.

3 Defendant shall be afforded a five (5) day grace period for each monthly payment. In the  
4 event that any payment is more than five (5) days late, the entire outstanding balance of the  
5 judgment shall become immediately due and owing, and the Judgment may be filed with the  
6 Court. Prior to filing the Judgment, there shall be at least five (5) days written notice of  
7 delinquency given to the Defendant and its counsel, as listed below:

8  
9 Archie Granata, CFO  
10 CLS Nevada, LLC  
11 10115 S. Valley View Blvd.  
Las Vegas, NV 89141

12 Gary G Branton  
13 Branton Law Office  
14 312 S. Jones Blvd.  
15 Las Vegas, NV 89107  
16 Tel: 702-395-0320  
17 Fax: 702-395-1871  
18 Email: gary@garybrantonlaw.com

19 Norman H. Kirshman  
20 Norman H. Kirshman PC  
21 700 South Third Street  
22 Las Vegas, NV 89101  
23 Tel: (702) 382-5210  
24 Fax: 702-366-0424  
25 Email: kirshmanlaw@yahoo.com

21 The five (5) day grace period shall begin to toll the date after sending such Notice to  
22 Defendant and their current counsel. In no event shall Defendant be deemed in default of this  
23 Agreement, with respect to failing to make any payments referenced herein, until the Defendants  
24 fails to make a payment within the five (5) day grace period.

Should the Defendant fail to make any payments as described herein, a default in this Agreement will have occurred. Upon such a default which remains uncured after the five (5) day grace period, Plaintiffs will be free to file and record this Stipulated Judgment, which shall act as a Judgment against the Defendants in the amount of Three Hundred Thousand Dollars (\$300,000.00), less any payments already made by the Defendant to the Plaintiffs, pursuant to this Agreement. As an additional penalty, Defendant shall be responsible to pay ten percent (10%) interest per month upon the unpaid portion of the Stipulated Judgment, until the Stipulated Judgment is fully satisfied.

Upon faithful completion of the payments described herein, Plaintiffs shall return this Stipulated Judgment to the Defendant unfiled and unrecorded.

Dated: This 7<sup>th</sup> day of May, 2012.

Dated: This 7<sup>th</sup> day of May, 2012.

/s/Norman Kirshman

NORMAN KIRSHMAN

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/s/Archie Granata

ARCHIE GRANATA

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